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AND FIRST CLASS MAIL

Mr. Laurence Shaffer
Town Manager
Amherst Town Hall
4 Boltwood Avenue
Amherst, MA 01002

Re: General Considerations in Granting New Liquor Licenses

Dear Mr. Shaffer:

You have asked that I outline general considerations for the Board of Selectmen ("Board") when it reviews a new liquor license application. The following are basic questions that arise in most applications.

1. Is the license application complete?

I recommend that you review the license application in detail. The Board need not act upon, or approve an incomplete license application. The application form provided by the Alcoholic Beverages Control Commission ("ABCC") has a series of questions designed to elicit information about the applicant, his/her background, the proposed licensed premises, as well as the identity of the investors in the enterprise. An applicant's failure to answer questions is often a sign of trouble.

2. Is the applicant of good character?

General Laws, Chapter 138, Sections 12 and 15 require that the applicant be of 21 years of age and of "good character" to be eligible for a liquor license. General Laws, Chapter 138, §12 ("pouring licenses") and §15 ("package store licenses") contain specific requirements in this regard. Section 12 prohibits the Board from granting a license to a person who has been convicted of a violation of a state or federal law involving narcotics. Section 15 prohibits the Board from granting a license to a person who has been convicted of any felony.

An early indication of an eligibility problem is a failure to answer criminal history questions on the application form. As indicated above, you may deny an application if it is incomplete.

KOPELMAN AND PAIGE, P.C.

Mr. Laurence Shaffer
Town Manager
March 11, 2010
Page 2

One issue that often arises is whether the Board is entitled to receive information concerning a person's criminal history. Certainly, an applicant is free to provide criminal history on the application. However, the Board will not be in a position to judge whether the answers to the criminal history questions are complete unless it receives a CORI certification from the Criminal History Systems board (www.mass.gov). If you have not previously addressed this issue, I recommend that you contact the CORI Board for permission to review criminal history in connection with license applications.

3. Is there a "public need" for a licensee at the proposed location?

General Laws, Chapter 138, Section 23 allows you to determine whether there is a "public need" for a liquor license. The question of "public need" is among the most abstract that the Board will ever face, and is susceptible to a wide range of philosophical considerations. At a minimum, the test includes an assessment of public want at a particular location. Ballarin, Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506 (2000). Further, reducing the matter to one of observational practice rather than philosophy, you may safely evaluate "public need" by examining the number of similar licenses in the vicinity of the proposed location, with the object of determining whether adding another license in that area would be beneficial to the Town. A concentration of licenses in business district may be desirable. On the other hand, the Board could consider the presence of competition in concluding that one more license in an area would be one too many. Great Atlantic and Pacific Tea Company v. Springfield, 387 Mass. 833, 839 (1983). Either way, in performing this analysis, the Board has broad discretion. Ballarin at 511. That exercise of discretion is likely to be upheld if the decision is based on facts and reason.

4. Are the proposed licensed premises suitable?

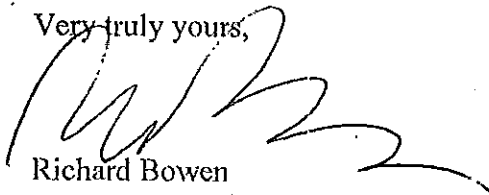
The Board is authorized to take into account a wide range of factors at a proposed location, such as traffic, parking, noise, size, the type of operation proposed for the location, and even the business reputation of the applicant for conducting such businesses. Ballarin at 511. In doing so, the Board is not conducting a zoning review, as licensing and zoning are two separate matters. Lincoln v. Giles, 317 Mass. 185, 187, (1944). Nonetheless, even though it is not making a zoning determination, the Board may consider those underlying factors that might warrant the separation of business activities from residential ones, such as traffic, parking and noise as cited above. Therefore, while it might be appropriate to deny an application by reciting of the effects a grant would have on neighboring residences, the ABCC would likely not uphold a denial based solely on a conclusory statement that "the zoning is wrong".

KOPELMAN AND PAIGE, P.C.

Mr. Laurence Shaffer
Town Manager
March 11, 2010
Page 3

This is a general review of licensing considerations, and there can be specific issues that arise in any particular application. I would be happy to answer any questions you may have in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Richard Bowen', written over the typed name.

Richard Bowen

RB/sjm
395347/AMHR/9999

DENIAL OF APPLICATIONS

